

SECOND AMENDMENT TO THE  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR ELCAR (EL LLANO SUBDIVISION) and ADDITIONAL LOTS

This Second Amendment to the Declaration of Covenants, Conditions, Reservations and Restrictions is made this 13<sup>th</sup> day of December, 2004, by ELCAR LIMITED PARTNERSHIP.

WHEREAS, ELCAR LIMITED PARTNERSHIP owns the property described in Article II of this Declaration situated in Taos County, State of New Mexico; and

WHEREAS, ELCAR LIMITED PARTNERSHIP has established a general plan for the improvement of the Subdivision and additional lots and desire to provide for the preservation of the values and amenities of the property by subjecting the property to the covenants, conditions, reservations, restrictions and easements hereinafter set forth, each and all of which is and are for the benefit of the property and each subsequent owner of the property or any part thereof, and each successor in interest to ELCAR LIMITED PARTNERSHIP and any such owner.

NOW, THEREFORE, ELCAR LIMITED PARTNERSHIP declares that the property hereinafter described is and shall be held, transferred, sold, conveyed, and occupied subject to the following covenants, conditions, reservations, easements and restrictions (hereinafter sometimes referred to as "Covenants"). All covenants are for the benefit of the property and shall run with the land and shall be binding upon and inure to the benefit of ELCAR LIMITED PARTNERSHIP, each subsequent owner of the property, or any part thereof, and each successor in interest of ELCAR LIMITED PARTNERSHIP and any such owner.

ARTICLE I

Definitions

Section 1.1 The following words when used in this Declaration shall have the following meanings:

(a) "Association" shall mean the owners' association, which shall be organized as a non-profit corporation for purposes of managing, maintaining and owning improvements and/or property within the Subdivision and additional lots and any additional property made subject to this Declaration pursuant to Article XI.

(b) "Building Envelope" shall mean the area designated by the ELCAR LIMITED PARTNERSHIP on each Lot for construction of the Residence and attendant Improvements as shown in the Design Guidelines.

(c) "Committee" means Architectural Control Committee. See Article VI.

(d) "Declaration" means this declaration of covenants, conditions, reservations, easements and restrictions, and any amendment or modification thereto.

(e) "Design Guidelines" shall mean the rules adopted by the ELCAR LIMITED PARTNERSHIP, Committee or the Association related to the construction of Improvements.

(f) "Entry Corral Easements" shall mean the easements on all lots of the El Llano Subdivision on which the entrance improvements may be built and public and private utilities may be installed.

(g) "Entrance Improvements" shall mean the security gate, communication system, sign(s), lighting, curbing, stonework, miscellaneous structures, walls, covered benches, mailboxes, water-storage tank, landscaping and irrigation system that may be located across the Road and within the Entrance Easements.

(h) "Improvements" shall include, without limitation, buildings, outbuildings, (including sheds and storage buildings), roads, driveways, parking areas, fences, retaining walls, stairs, decks, windbreaks, poles, antennas, signs, utility or communication installations, (whether above or underground), landscaping and any structure and excavation of any type or kind.

(i) "Lot" means, any one of the Lots numbered 9A through 9b and 16A through 16L as shown on the Plat

(j) "Owner" means the persons or entities, including ELCAR LIMITED PARTNERSHIP, holding legal title or beneficial ownership of the fee, including the purchaser under an installment sale contract of a Lot and any Residence located thereon, or a lessee of a Lot pursuant to a leasehold agreement of a term of twenty (20) years or greater. Owner shall not include a seller under an installment sale contract of a Lot and any Residence located thereon, or the lessor of a Lot pursuant to a leasehold agreement with a term of greater than twenty (20) years.

(k) "Pedestrian Easement" means any pedestrian easement granted.

(l) "Private Driveways and Utility Easements" means easements established for the driveways and utility extensions from the road to various lots within the Subdivision and additional lots. The construction and maintenance of private driveways and the extension and maintenance of utilities within these utility easements are the responsibility of the benefited homeowners.

(m) "Residence" means any building or a portion of the building situated on a building site designed and intended for use or occupancy as a single-family residence.

(n) "Road" shall mean the road right-of-way within the El Llano Subdivision.  
(Contrast with "Offsite Road," defined below.)

(o) "Road Maintenance Agreement" shall mean the agreement that shall be entered into for the purpose of maintaining and paying the expenses for maintenance of the private access easement from Taos County Road 110 to the Subdivision and additional lots ("Offsite Road").

(p) "Setback" means the shortest distance between a Residence or structure and the property line.

(q) "Site Enhancements" shall mean any of the following items placed on the Subdivision and additional lots, or within the Road: screenings of utilities and wells, interconnecting water lines (connecting two or more well-share systems for water access in the event of a pump or other failure on one of the systems), facings on drainage structures, lighting and landscaping for the Road and Entrance Improvements and central mailboxes, to the extent any of the above may be undertaken by the ELCAR LIMITED PARTNERSHIP or the Association.

(r) "Subdivision and additional lots" means all of the real property described in Article II.

(s) "Well(s)" shall mean the wells, storage tanks and well equipment that may be located on Lots 16G, 9H, 9I and 16A of the El Llano Subdivision.

(t) "Well Share Agreements" shall mean the agreements that shall be entered into for the purpose of maintaining the wells, paying the expenses of their operation (including electricity costs), and replacing equipment as needed.

## ARTICLE II

### Property Subject to Declaration: Dedication of Entry Corral Easements

The following described property situated in the County of Taos, State of New Mexico is made subject to the easements, covenants, conditions, reservations and restrictions set forth in this Declaration:

The owners of Lots 16G, 9H, 9I and 16A of the El Llano Subdivision, Taos County, New Mexico, ELCAR LIMITED LIABILITY COMPANY, hereby grant the "Entry Corral Easements" as defined in Paragraph (f) of Article I of this document, and as shown on Exhibit A attached hereto. These easements are granted for the benefit of all property subject to this Declaration as listed in this Article, or as may be added to this Declaration subject to the provisions of Article XI. These non-exclusive, perpetual easements are for the purposes of the construction, maintenance, and use of entrance improvements, public utilities and private waterlines.

### ARTICLE III

#### Land Use

Section 3.1 All Residences on Lots within the Subdivision and additional lots are hereby restricted to dwellings for single-family-residential use with a minimum of two-thousand (2,000) square feet of enclosed heated living area, exclusive of carports, garages, basements and nonenclosed porches or patios. Each Residence shall be occupied by no more than one (1) family and no Residence shall be used as a boarding house or otherwise divided into apartments or rooms for rental purposes. This restriction shall not prevent the rental or lease of the entire Residence by the Owner thereof, but any such rental or lease must be by a written agreement that requires the tenant to observe this Declaration and makes a breach of this Declaration a breach of such rental agreement or lease. No Residence may be leased or rented for a period of less than ninety (90) days.

One guesthouse per Lot shall be permitted and shall have a minimum living space of 800 square feet. A guesthouse shall be occupied by no more than two persons.

No swimming pools shall be permitted within the Subdivision and additional lots.

Section 3.2 All construction upon any Lot (including driveways and walkways) shall be new construction, shall conform to rules adopted by the Committee established pursuant to Article VI below, and all construction shall be completed within twelve (12) months after ground is broken for that new construction or remodeling. No existing building or structure may be moved from another site to a Lot. A Residence- and guesthouse, if any, shall be built within the Building Envelope for that specific Lot. Great care shall be taken during any construction to minimize graded areas and destruction and damage to natural vegetation and terrain. The

Committee may establish rules for Owners and construction personnel to enforce the provisions of the Declaration.

Section 3.3 The height of Residences or other structures is limited to twenty-seven (27) feet above natural grade at the lowest point abutting the Residence or structure (or, if lower, the County height limitation), PROVIDED HOWEVER that the Committee has the discretion to approve or disapprove a Residence or structure based on whether its design, location and scale are compatible with neighboring properties and design-guideline goals.

Section 3.4 ~~No~~ temporary house, trailer, tent, garage or other outbuilding shall be used on any Lot at any time as a Residence, either temporarily or permanently, and no Residence placed or erected on any part of any Lot shall be occupied in any manner at any time prior to it being fully completed; provided, however, that during the actual construction or alteration of a Residence on any Lot, necessary temporary buildings for storage of materials, etc., may be erected and maintained by the person doing such work.

Section 3.5 The following rules govern the keeping of pets in the Subdivision and additional lots:

(a) No animals, except for household pets, shall be kept on or in any Residence (including guest house) or Lot, and provided further that a maximum of two (2) domestic dogs and three (3) domestic cats per Lot, may be kept and maintained in a Residence or Lot provided they are not kept, bred or maintained for any commercial breeding purposes. Dogs will not be allowed to roam at will outside owner's lot.

(b) All provisions of the Taos County Animal Control Ordinance, as amended, or any other animal control ordinance, regulation, or law that subsequently applies to the Lots, will apply in the Subdivision and additional lots and are adopted by reference and incorporated herein as rules of the Subdivision and additional lots.

(c) Except when on its Owner's Lot, an animal permitted to be maintained pursuant to this Section 3.5 must be carried or kept on a leash and attended by a responsible person.

(d) Owners are responsible for any property damage, injury and disturbances their pet(s) may cause or inflict.

(e) No dog shall be permitted to bark, howl or make other loud noises for such a time as disturbs the rest or peaceful enjoyment of the other Owners.

Section 3.6 No vehicles of any type shall be permanently or semi-permanently parked for purposes of repairs, reconstruction or storage on any portion of a Lot visible from other

Residences or the Road. A vehicle shall be deemed parked for repairs, reconstruction, or storage if it is not driven off the Lot for fourteen (14) consecutive days.

Section 3.7 Except temporarily during the construction of any improvements, all utility lines, including but not limited to electrical, gas, telephone, cable television, and other communication systems shall be underground, except for access ports and above-ground transformers.

Section 3.8 No commercial vehicles or mobile homes shall be kept, placed or maintained on any Lot at any time, except where required for the limited purposes of building, repairing, refinishing or maintaining the Lot or a Residence on the Lot, for the purpose of moving household goods or other necessary or customary furnishings, equipment or supplies in or out of the Lot. No motorcycles, campers, motor homes, boats, trailers or similar vehicles shall be kept, placed or maintained on any Lot at any time, unless architectural approval has been obtained from the Committee to assure appropriate location and screening for the benefit of neighboring Lots.

Section 3.9 No oil drilling, oil development, oil refining, oil derrick or other structure designed for use in drilling for oil or natural gas, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, mineral excavations or shafts be permitted upon or in any Lot.

Section 3.10 No garbage, trash, rubbish, weeds, clippings from trees, shrubs or lawns, ashes or other refuse may be thrown, dumped or allowed to accumulate on any Lot. Provided, however, non-commercial compost piles that do not create a nuisance to the Owners of adjoining Lots may be maintained if screened from view from the Road and other Lots. All garbage, trash and rubbish shall be placed and kept in covered sanitary containers screened from view from the Road and other Lots and shall be regularly removed from each Residence or Lot. Refuse placed on the Road for pickup shall not be placed in open view more than twenty-four (24) hours before the scheduled pick-up time. There shall be no burning of refuse out-of-doors. No incinerators or other devices for the burning of refuse indoors shall be constructed, installed or used by any person except in conformity with law and as approved by the Committee.

Section 3.11 Plans for the installation, placement and maintenance of solar collectors shall be submitted to and approved by the Committee. Solar collectors, air conditioners and air coolers shall be installed so that visibility of such equipment is minimized from the Road and adjoining Residences.

Section 3.12 Plans for the installation, placement and maintenance of exterior radio, television, citizens band, ham or other aerial antenna more than five (5) feet in height, or dish antenna or towers (or any support thereof) shall be submitted to the Committee for approval prior to installation. In general such devices must be placed or screened so that their visibility is minimized from the Road and adjoining Residences.

Section 3.13 Outside clotheslines or other outside clothes-drying or airing facilities, ground-mounted solar energy collectors and equipment, propane tanks, ground-mounted air conditioners or air-conditioning compressors and equipment shall be enclosed within a walled service area or areas so as to conceal them from the Road and ground floor of neighboring Residences. Screening must be harmonious with the overall design of the structures on the Lot.

Section 3.14 If a Residence or other structure is destroyed, wholly or partially by fire or other casualty, such Residence or other structure shall be properly rebuilt, repaired or replaced to conform to this Declaration, or all remaining debris and foundations shall be removed from the Lot. The Residence or other structure shall be completely rebuilt, repaired or replaced, or the debris and foundation shall be removed from the Lot within one hundred eighty (180) days of the date it was wholly or partially destroyed.

Section 3.15 No business activities of any kind whatsoever shall be conducted in Residences or on any portion of the Subdivision and additional lots except home occupations, provided that only members of the family residing on a Lot are employed, the use is incidental and secondary to the use of the Lot as a Residence, and no stock in trade is manufactured, displayed or sold on the Lot. Further, there shall be no external evidence of the home occupation activity, such as signs, commercial vehicles, inordinate traffic, outside storage, noise, dust, odors, noxious fumes or other nuisances permitted upon or to emanate from any Lot. Provided, further, that the foregoing restriction shall not apply to the business activities or the construction and maintenance of buildings, if any, of Original Owners or any Owner, their assigns and agents during the construction of Lot improvements and the sale thereof.

Section 3.16 Residential style and design for all lots of El Llano Subdivision shall be generally a harmonious "Mediterranean" or "Pueblo" motif. The definition of "Pueblo" is open to interpretation by the Committee. The exterior surfaces of residences shall be plastered or stuccoed in an adobe-type texture and color, and may have accents or portions of buildings faced with natural stone. Exterior colors must comply with the specifications in the Design Guidelines.

Section 3.17 Notwithstanding any provision herein contained to the contrary, it shall be expressly permissible for ELCAR LIMITED PARTNERSHIP to maintain upon such portion of the Subdivision and additional lots or Lot as ELCAR LIMITED PARTNERSHIP may choose, during the period of Lot sales or construction of Improvements or sale of any Residence, such facility or facilities as in the opinion of ELCAR LIMITED PARTNERSHIP may be reasonably required, convenient or incidental to the Lot sales or construction of Improvements or sale of any Residence, including, without limitation, a business office, storage area, construction yard, sign, model unit and sales office.

Section 3.18 No walls shall be installed on any Lot unless the Committee has approved the design and construction plans. Walls shall be of the type and character to integrate with the architectural style of the Residence, and shall not exceed eight (8) feet in height. No dog pens or runs otherwise permitted by this Declaration may be constructed unless the Committee has

approved the design and construction plans. No wire fencing, chain link, plastic, vinyl or unfinished concrete block shall be used or constructed.

Walls shall not be constructed on lot lines. Any such walls must have prior approval of the Architectural Control Committee as to design and construction plans, and all such walls must have a common or complementary design.

Section 3.19 Landscaping of all Lots, exterior to the buildings thereon, shall be finished according to detailed landscape and irrigation plans, which plans shall have been approved by the Committee, within three (3) months of completion of building construction. Such plans shall be prepared according to guidelines furnished by the Committee. No trees or brush growing upon any Lot shall be felled or trimmed, except in an emergency or for safety reasons, nor shall any natural areas be cleared or formal lawn areas be constructed or landscaping performed on any Lot without prior written permission of the Committee. Landscaping materials should match the desert environment, except for those areas concealed by walls. Concealed areas may be planted with grass or vegetation not common to the natural desert environment, provided, however, that severe limitations on water usage have been imposed by Taos County and must be considered for any irrigated landscaping. In all landscaping schemes, the use of native and drought-tolerant plant materials is highly recommended. The use of railroad ties, gravel, lava rock, or other nonvegetative materials as substitutes or alternates to landscaping ground covers is strongly discouraged. In all cases, the use of red lava rock is prohibited. Owners shall be required to revegetate any areas of a Lot (after construction of the residence) that do not contain improvements.

Section 3.20 Except as provided in Sections 3.4 and 3.17, no exterior storage areas, storage buildings, portable buildings or utility areas shall be constructed, installed or moved onto Lots.

Section 3.21 All driveways and other ingress and egress to the Residence on each Lot must be constructed and maintained pursuant to the site plan approved by the Committee.

Section 3.22 Septic tanks and leach fields, or alternative liquid-waste-disposal systems, shall be placed according to rules established by the Committee, Taos County and the State of New Mexico. Prior to construction of a Residence on any Lot, the Owner must obtain an on-site liquid-waste-system permit from the Taos Field Office of the New Mexico Environment Department.

Section 3.23 No Lot may be subdivided, nor may a portion of any Lot be sold except to adjacent property holders for the purpose of increasing the size of an adjacent Lot, and any such permitted Lot line adjustment will require the prior written approval of the Committee.

Section 3.24 Each Owner shall provide for an individual address identification device within the Road and utility easement or within each Owner's Lot. The Committee shall provide



each Owner with the architectural design and placement location of the individual address identification device. Maintenance and repair of these items shall be the responsibility of the Owner.

#### ARTICLE IV

##### Nuisances

Section 4.1 No illegal, noxious or offensive activity shall be carried on in the Subdivision and additional lots, nor shall anything be done therein which is, may be or may become a nuisance or cause unreasonable disturbance, or annoyance to Owners in the enjoyment of their Residences and Lots.

Section 4.2 No firearms, BB guns or fireworks shall be discharged or used in the Subdivision and additional lots. Open fires shall not be permitted in the Subdivision and additional lots, except for fire pits or barbeque pits within a courtyard or deck.

Section 4.3 No signs or other advertising shall be erected placed or displayed in the Subdivision and additional lots or upon any Lot unless the size, form and number of the same are first approved in writing by the Committee; provided, however, that any Owner may, without such prior approval, erect one sign of not more than two (2) feet by three (3) feet advertising a Lot for sale or rent.

Section 4.4 No portion of the Subdivision and additional lots shall be used or maintained as a dumping ground for rubbish.

Section 4.5 All exterior lighting on any parcel shall be indirect or controlled in such a manner so as to not unreasonably disturb residents of other parcels within the properties.

## ARTICLE V

### Maintenance of Landscaping and Improvements

The Owners shall maintain landscaping and all improvements in good order and repair.

## ARTICLE VI

### Architectural Control Committee

Section 6.1 A Committee is hereby established and shall be composed initially of the following three (3) persons: Jason A. Garcia, Carol V. Garcia, Jay A. Garcia. The members of the Committee shall serve for a term of two (2) years from the date hereof or until twenty (20) days after the date ELCAR LIMITED PARTNERSHIP have conveyed title to its last Lot, whichever is longer, and until their successors have been duly qualified ("Original Term"); provided that ELCAR LIMITED PARTNERSHIP may, for cause stated, remove any member of the Committee prior to the expiration of the Original Term. In the event of the death of a Committee member during the Original Term, ELCAR LIMITED PARTNERSHIP shall have full authority to designate a successor. The Association shall fill vacancies occurring after the Original Term.

Section 6.2 Before commencing construction, remodeling, additions to, alterations of, or removal of any building, wall, fence or any other structure whatsoever on any Lot and before commencing any landscaping or landscaping construction, including structural components that are visible from the Road, the Owner shall apply to the Committee for approval. The Owner shall submit to the Committee:

(a) A complete set of plans, including but not limited to, foundation plans, floor plans, elevations, topographical information, details, and specifications which identify construction materials and exterior color schemes and a site plan showing the Building Envelope and location of the structure on the Lot, identifying all construction, including but not limited to, roof overhang lines, all setbacks at a point of minimum distance to each Lot boundary, dimensions of the Lot, all walks, drives, patios, decks and walls and their construction materials, and location and features of septic tanks or alternative systems, which set of plans and specifications upon approval will be retained by the Committee to remain on file. Owners are advised to consider governmental restrictions on water usage in designing their landscaping, plumbing and liquid-waste disposal systems.

(b) If deemed necessary by the Committee, the following may be required:

(i) Colors and samples of exterior materials;

- (ii) Roof plans;
- (iii) The Owner's proposed construction schedule;
- (iv) An architect's rendering showing all elevations of the proposed construction (these renderings may be in pencil or ink line drawings); and
- (v) The plan of the Owner for managing construction to limit excessive grading and damage to vegetation on the Lot.

Section 6.3 No building, structure, or other Improvement of any kind, including walls and landscaping, shall be erected, altered, placed or maintained upon any Lot, unless, and until the complete set of final plans and specifications has been approved in writing by the Committee as to the quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to Building Envelope, topography and finish-grade elevation. Any resurfacing or painting of exterior wall areas shall be completed in a color and texture as close to the original as possible, unless the consent of the Committee is obtained in writing as to a different color and/or texture.

Section 6.4 The Committee shall have the right to disapprove any plans, specifications or details submitted to it if such plans or specifications are not in accord with all the provisions of this Declaration, Committee rules (including any Design Guidelines), or if a design or color scheme for the proposed structure is not in harmony with the general surroundings or in harmony with the Lot or adjacent structures, or if the plans and specifications submitted are incomplete, or if the Committee deems said plans and specifications to be contrary to the spirit and intent of this Declaration, or contrary to the interests and welfare and rights of all or any part of the Subdivision and additional lots.

Section 6.5 If the Committee fails to approve or disapprove the plans, specifications and other required information within thirty (30) days after submission, then approval shall not be required, provided that no building or structure shall be erected that violates any of the terms of this Declaration.

Section 6.6 Neither the Committee, its members, nor ELCAR LIMITED PARTNERSHIP shall be responsible in any manner whatsoever for any defect in any plans or specifications as submitted or as revised by said Committee, or for work done pursuant to the requested changes to said plans and specifications.

Section 6.7 A majority of the Committee may, from time to time, grant exceptions or variances not in substantial conflict with this Declaration, without the consent of the Owners, in such cases where strict adherence to those requirements would operate to work a hardship on a

Lot Owner, or where the requirements cannot reasonably be met due to the topography, location or shape of a particular Lot or Building Envelope.

Section 6.8 The Committee is authorized and shall have the right to charge a fee in a minimum amount of \$200.00 for review of each set of plans and specifications and other required information submitted to the Committee in connection with an application for construction approval required pursuant to this Article VI. The Committee, in its discretion, shall have the right to charge a fee in excess of \$200.00 for such review in instances where, due to unusual circumstances, an inordinate amount of time is required for the review.

Section 6.9 The following are a portion of the Design Guidelines that will be considered by the Committee. Each Lot Owner should review the entire Design Guidelines before purchasing a Lot.

1. All houses must be constructed in an architectural style to blend with the desert environment.
2. The surface of all walls constructed on the Owner's Lot that face the Road or other Lots shall be colored to match or complement the color of the walls of the Residence.
3. All driveways shall be constructed of materials specified in the Design Guidelines.
4. All mechanical equipment shall be located so as not to be visible from the Road or neighboring Lots. Mechanical equipment located on flat roofs must be hidden; all other equipment shall be located at ground level.
5. Exterior lighting fixtures shall be located and oriented to focus light inward and downward to minimize light encroachment onto neighboring Residences. No unshaded floodlights that cause light to shine directly into the Residence of any other Lot shall be maintained. No quartz, metal halide, neon or mercury vapor lights or fixtures will be allowed. No street lights or up lighting will be allowed in the Subdivision and additional lots. The intent of this covenant is to maintain the nighttime views and ambiance of other Owners while providing minimal required exterior lighting for the Owners. Lighting shall conform to the Taos County Land Use regulations, in particular with respect to shielding of light sources.
6. Garage doors must be of materials that are not translucent.
7. The finish on exterior surfaces of homes, including without limitation their roofs and mechanical equipment, must be in conformance with the provisions of the Design Guidelines.



## ARTICLE VII

### Road, Parking, Entrance Improvements, Site Enhancements, and Pedestrian Easement

Section 7.1 The Road is a private road, unless it is accepted by Taos County for maintenance as a dedicated road.

Section 7.2 Parking on the Road in front of Residences, except for occasional situations, is prohibited. Parking on the Road is not allowed on a daily basis.

Section 7.3 The ELCAR LIMITED PARTNERSHIP may choose, at the ELCAR LIMITED PARTNERSHIP's expense, to construct some or all of the Entrance Improvements and Site Enhancements. Utilities expenses and maintenance and repairs to the Road, Entrance Improvements and Site Enhancements shall be the responsibility of the Association and shall be borne equally by the Owners.

Section 7.4 The Pedestrian Easement shall not be obstructed by any of the Owners and shall remain in its natural state. The Owners of each Lot over which the Pedestrian Easement exists shall keep the same clean.

Section 7.5 It is understood that all roads throughout the El Llano Subdivision will allow ingress, egress and utility placement for all lot owners throughout the subdivision and for future adjacent developments to the North and East on lands owned by ELCAR LIMITED PARTNERSHIP.

## ARTICLE VIII Owners' Association

Section 8.1 The Association shall be organized to manage and maintain the Road, Entrance Improvements and Site Enhancements. The Owners may also delegate to the Association by a majority vote, the maintenance responsibilities of the Owners for the Offsite Road that are created by the Road Maintenance Agreement. The Association shall be organized as a non-profit corporation under the laws of the State of New Mexico. The Association's affairs shall be governed by this Declaration, and by its articles of incorporation and bylaws.

Section 8.2 The affairs of the Association shall be managed by an elected board of directors, which shall exercise all the rights and powers and perform all the duties and responsibilities set out in this Declaration and the articles and bylaws of the Association.

Section 8.3 Each Owner shall be a member of the Association for so long as such ownership of a Lot continues. Rights, duties, privileges and obligations of an Owner as a member

of the Association shall be those set forth in, and shall be exercised and imposed in accordance with, the provisions of this Declaration, and the articles and the bylaws of the Association. The rights and obligations of an Owner and membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership to the Owner's Lot and then only to the transferee of ownership of such Lot, or by intestate succession, testamentary disposition, foreclosure of a mortgage of record, or other legal process now in effect or as may hereafter be established. Any attempt to make a prohibited transfer is void and shall not be recognized by the Association.

Section 8.4

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- (a) The Association shall own and hold title to the road through El Llano Subdivision and shall manage and maintain the Road, Entrance Improvements and Site Enhancements. The Association may acquire interests in real property within the Subdivision and additional lots, construct improvements thereon, and manage, maintain and operate said real property and improvements if members of the Association approve thereof by unanimous consent. Any additional acquisitions or functions undertaken by the Association shall be funded by assessments as provided for hereinafter.
- (b) The Association may contract for or provide a watchman or entrance guard at the entrance to the Subdivision and additional lots, security patrol, refuse disposal, and such other services, facilities and maintenance as may be deemed necessary or desirable by the board of directors thereof.
- (c) The Association may employ the services of a secretary, manager, architect, engineer, consultant, other employee or employees, and attorneys and accountants, to manage and carry out the affairs of the Association.
- (d) The Association shall obtain and maintain in force such policies of insurance, including board of director's liability insurance, as may be deemed necessary or advisable by the board of directors.
- (e) The Association may, from time to time, subject to the provisions of this Declaration, adopt, declare, amend modify and repeal rules and regulations, by a majority vote of the members of the Association. Said rules may relate to any matter or thing involving the Association, the board of directors, any committee thereof, any property managed or maintained by the Association, the articles and bylaws of the Association or this Declaration. Said rules shall become effective when passed upon by the members.
- (f) In the event of dissolution of the Association, its common property, if any, shall then be dedicated to a governmental body.

(g) The Association shall have such other rights, powers, authority and duties as set forth in its articles and bylaws.

Section 8.5 Members shall be entitled to one vote for each Lot owned. Members may vote in person or by proxy executed in writing by the member or by his duly authorized attorney-in-fact. If an Owner casts a vote for a certain Lot, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of any other Owners of the same Lot.

Section 8.6 ELCAR LIMITED PARTNERSHIP, for each Lot owned by them, hereby agree to pay, and each Owner by the acceptance of a deed or contract of sale therefor, whether or not so expressly provided in any such deed or contract or other conveyance, is deemed to agree to pay to the Association:

- (a) Maintenance assessments;
- (b) Assessments for capital improvements;
- (c) Utility assessments; and
- (d) All other fees or other monies due to the Association from such Owner.

The maintenance assessments, assessments for capital improvements, and utility assessments, plus interest, late charges, costs and attorney's fees, shall be a charge against the Lot and shall be a continuing lien upon the Lot against which each such assessment is made, and shall also be the personal obligation of the Owner or Owners of such Lot on the assessment date. The personal obligation to pay assessments shall not pass to successors in title unless expressly assumed by them.

Section 8.7 there shall be an operating fund, into which the Association shall deposit all monies paid to it as:

- (a) Maintenance assessments;
- (b) Assessments for capital improvements;
- (c) Utility Assessments;
- (d) Miscellaneous income; and
- (e) Income and profits attributable to the operating funds;

and from which the Association shall make disbursements in performing the functions for which the foregoing assessments are levied.

Section 8.8 Maintenance Assessments.

(a) Within thirty (30) days prior to the commencement of each fiscal year the Association shall estimate the costs and expenses to be incurred by the Association for maintenance and utilities during such year, including a reasonable provision for contingencies, and reserves for major repairs and replacements, and shall subtract from such estimate an amount equal to the anticipated balance, exclusive of any reserves for contingencies and reserves for major repairs and replacements, in the operating fund at the start of such year. The sum or net estimate so determined shall be assessed against the Owners. The amount of each Owner's maintenance assessment shall be determined as follows:

$$\frac{\text{Total Estimated Maintenance Assessment}}{\text{Total Number of Lots in the Subdivision and additional lots}}$$

(b) If, at any time and from time to time, during any fiscal year, the maintenance assessment proves or appears likely to prove inadequate for any reason, including non-payment of any Owner's share thereof, the Association may levy a further maintenance assessment in the amount of such actual or estimated inadequacy, which shall be assessed to all Owners apportioned as provided in subsection (a).

(c) Maintenance assessments shall be due and payable to the Association when levied or in such installments during the year, and such due dates as the board of directors shall designate.

Section 8.9 Utility assessments shall be paid on a pro rata basis by each Owner of a Lot for utility expenses related to the Entrance Improvements and Site Enhancements.

Section 8.10 The Association may also levy in any year an assessment for paying or retiring, in whole or in part, the cost or proposed cost of acquisition and construction of a described capital improvement (whether the improvements constitute real or personal property), in an amount greater than can be included in the maintenance assessment, provided it has been approved by a majority of the voting power of the members, which assessment shall be assessed to Owners in the same manner as provided for in Section 8.8(a).

Section 8.11 each assessment under this Article shall be the separate, distinct and personal debt and obligation of the Owner against whom it is assessed. Any assessment provided for in this Article, which is not paid when due, shall be delinquent. With respect to each assessment not paid within ten (10) days after its due date, the Association may, at its election, require the Owner to pay a late charge, interest, plus the reasonable costs of collection, including attorney's fees. Such charges shall be considered an additional assessment and collectible with the assessment for which it was charged. If any such assessment is not paid within ten (10) days after the delinquency date, the Association may, at its option, file in the real property records of



Taos County, New Mexico, a notice of delinquent assessment specifying the particulars thereof, including (i) name of Owner, (ii) date and amount of assessment and (iii) the description of each Lot as to which the assessment is delinquent, and bring an action at law against the Owner or Owners personally obligated to pay the same, and upon compliance with the provisions of this Article to foreclose the lien against the Lot, and there shall be added to the amount of such assessment the late charge, the costs of preparing and filing the lien and complaint in such action, and in the event a judgment is obtained, such judgment shall include interest at the rate provided for herein and a reasonable attorney's fee, together with the costs of action. Each Owner vests in the Association, or its assigns, the right and power to bring all actions at law or equity against such Owner or Owners and each Lot for the collection of such delinquent assessments.

Section 8.12 No action shall be brought to foreclose an assessment lien less than thirty (30) days after the date a notice of claim is deposited in the United States Mail, certified or registered, postage prepaid, to the Owner of said Lot, and a copy thereof is recorded by the Association in the office of the County Clerk; said notice of claim must recite a good and sufficient legal description of such Lot, the record owner or reputed owner thereof, the amount claimed (which shall include the interest and late charges, costs and attorney's fee recoverable by an action at law) and the name and address of the Association.

Section 8.13 Any sale pursuant to a foreclosure action is to be conducted in accordance with the customary practice of the courts of the State of New Mexico, applicable to the foreclosure of mortgages, or in any other manner permitted or provided by law. The Association, through its duly authorized agents, shall have the power to bid on the Lot at the foreclosure sale, and to acquire and hold, lease, mortgage, and convey the same.

Section 8.14 Upon the timely curing of any default for which a notice of claim of lien was filed by the Association, the officers of the Association are hereby authorized to file for record, as the case may be, an appropriate release of such notice, upon payment by the defaulting Owner of a fee, to be determined by the Association, in an amount sufficient to cover the actual costs of preparing and filing or recording such release, together with the payment of such other costs, interest or fees as shall have been incurred.

Section 8.15 The assessment lien and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

Section 8.16 The Association shall, upon demand, furnish to any Owner liable for assessments, a certificate in writing signed by an officer of the Association, setting forth whether the assessments on a specified Lot have been paid, and the amount of the delinquency, if any. A reasonable charge may be made by the board of directors for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8.17 The maintenance and utility assessments provided for in this Article shall commence as to each Lot upon the sooner of (i) the first day of the month following completion of construction of the Residence on the Lot or (ii) one year after recording of this Declaration. Construction shall be deemed completed upon issuance of a certificate of occupancy on final inspection approval of a Residence by the County of Taos or other appropriate governmental entity. The first such annual assessment shall be prorated for each Lot for the period from the commencement as provided in this section to the start of the next fiscal year following such commencement.

Section 8.18 The lien for assessments shall be subordinate to the lien of any first mortgage placed upon a Lot in good faith and for value; however, such subordination applies only to assessments for which a notice of claim of lien has not been filed in the records of the real estate records of the County Clerk of Taos County, New Mexico prior to recording of the Lot of the first mortgage in said records and the assessments before the sale or transfer of the Lot pursuant to a decree of foreclosure, or any transfer in lieu of foreclosure. The sale or transfer does not release the Lot from the liability or lien for assessments thereafter becoming due.

**ARTICLE IX**

**Term of Restrictions and Amendment**

Section 9.1 All of the Covenants set forth herein shall be binding upon the Owners and their heirs, personal representatives, successors and assigns and all persons claiming by, through or under them, for a period of twenty (20) years from the date of the filing of this instrument in the office of the County Clerk of Taos County, New Mexico, at which time the Covenants shall be automatically extended for successive periods of twenty (20) years, unless revoked or amended by an instrument in writing, executed and acknowledged by the Owners of not less than seventy-five percent (75%) of the Lots in the Subdivision and additional lots, which instrument shall be recorded in the office of the County Clerk of Taos County, New Mexico, within ninety (90) days prior to the expiration of the initial term hereof or any twenty-year extension.

Section 9.2 During the initial twenty (20) year term of the Covenants, and thereafter, the Owners of not less than the seventy-five percent (75%) of the Lots in the Subdivision and additional lots may at any time and from time to time release all of the Lots hereby restricted from any one or more, or all of the Covenants, or may modify, change or amend the Covenants as to all of the Lots by executing and acknowledging an appropriate agreement or agreements in writing for such purposes and filing the same for record in the office of the County Clerk of Taos County, New Mexico.

## ARTICLE X

### Wells

Water for the El Llano Subdivision and additional lots shall be provided by the Wells that are to be constructed by the ELCAR LIMITED PARTNERSHIP, or by other wells outside the Subdivision and additional lots. The Lots benefited by each Well shall be subject to the Well Share Agreements.

## ARTICLE XI

### Additional Property

The ELCAR LIMITED PARTNERSHIP, prior to the sale or transfer of ownership in the last Lot shall have the right, without the consent of the Owners or any lenders holding liens on any Lots, to make additional property subject to this Declaration and the owners thereof members of the Association. The Association, after the ELCAR LIMITED PARTNERSHIP have sold or otherwise transferred their ownership in the last Lot, shall also have the right to make additional properties subject to this Declaration and the owners thereof members of the Association.

## ARTICLE XII

### General Provisions

Section 12.1 A six-inch tolerance by reason of mechanical variance of construction is hereby automatically allowed for any distance requirements imposed by this Declaration or by the Committee.

Section 12.2 Invalidation of any one of these Covenants by judgment or court order, shall in no way affect any of the other provisions of the Declaration, which shall remain in full force and effect.

## ARTICLE XIII

### Enforcement

Section 13.1 All provisions of this Declaration shall be binding on all Lots and the Owners, regardless of the source of title of such Owners, and any breach thereof, if continued for a period of fifteen (15) days from and after the date that the Committee or Owner of a Lot notifies the Owner or party breaching this Declaration to refrain from the continuance of such action and to correct such breach, shall warrant the Committee or another Lot Owner to apply to any court of law or equity having jurisdiction thereof for an injunction or other relief. The

prevailing party in such action shall be entitled to its reasonable expenses in prosecuting such suit, including attorney's fees from the non-prevailing party.

Section 13.2 No delay or omission on the part of the Committee or any Owner or Owners of a Lot or Lots in exercising any right, power, or remedy herein provided for in the event of any breach of this Declaration shall be construed as a waiver thereof or acquiescence therein.

Section 13.3 No right of action shall accrue, nor shall any action be brought or maintained by anyone against ELCAR LIMITED PARTNERSHIP for or on account of the failure or neglect of ELCAR LIMITED PARTNERSHIP to exercise any right, power or remedy herein provided for in the event of any breach of this Declaration.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals the date first above written.

*Elmer N. Garcia*  
ELCAR LIMITED PARTNERSHIP  
for EL LLANO SUBIDIVISION

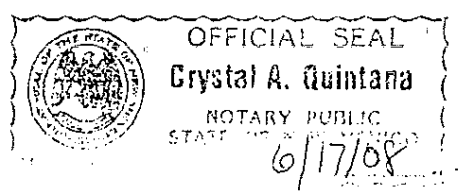
*Carol V. Garcia*

STATE OF NEW MEXICO }  
COUNTY OF SANTA FE } ss.

THE FOREGOING instrument was acknowledged before me this 13<sup>th</sup> day of December, 2004, by Elmer N. Garcia and Carol V. Garcia, Elcar Limited Partnership.

(SEAL)

*Crystal A. Quintana*  
12/13/04



STATE OF NEW MEXICO )  
COUNTY OF SANTA FE ) ss.

THE FOREGOING instrument was acknowledged before me this 27<sup>th</sup> day of November, 2012, by Elmer N. Garcia.

*Elmer N. Garcia* 11/27/12

*Carrie Taylor*

exp. 3-23-2015.

